have not finally disposed of the case,[16] and even then the petitioner may be left to his writ of error to the United States Supreme Court.[17] In the principal case, the petitioner relied upon a bald reassertion of the same facts which, as the petition showed, had been twice found untrue by the Supreme Court of Georgia. While, as has been seen, this conclusion is by no means binding, the majority may well be justified in refusing a hearing without the allegation of some additional facts or reasons why the state court's findings should be treated with such scant respect. The court may reasonably assume that the petitioner's case has been put in its strongest aspect on the petition. Any other rule of pleading would make the writ of *habeas corpus* peculiarly efficient as a weapon to prolong trials and postpone punishments.[18]

THE MAXIM: NO PRESUMPTION UPON A PRESUMPTION. — Authorities on the law of evidence generally agree with the remark of a recent text-writer that the term "presumption" is, in the law, "entirely superfluous" and "principally used, at the present time, on account of its convenient obscurity." [1] This censure applies both to what are called "presumptions of law" and what are called "presumptions of fact." [2] The former is simply a cloak to cover various rules of substantive law.[3] For instance, the courts really created a rule of property that adverse possession for twenty years bars the disseisee when they said that a lost grant would be "presumed" as a matter of law after that period. The latter is an imposing term usually signifying that the jury has been logical and reasonable in drawing certain inferences from proven facts.[4] If there be obscurity due to failure to analyze and see in just what sense the word is used when used singly, it is doubly delusive when encountered in the common maxim, "there shall be no presumption upon a presumption." This doctrine, though capable of other interpretations, is limited in the books to the meaning that an inference, sometimes called a "presumption of fact," may not be based upon another inference, but must

[16] Baker *v.* Grice, 169 U. S. 284; *In re* Wood, 140 U. S. 278. *Cf.* Gray, J., in Whitten *v.* Tomlinson, 160 U. S. 231, 240, "To adopt a different rule would unduly interfere with the exercise of the criminal jurisdiction of the several states and with the performance by this court of its proper duties."

[17] See Cook *v.* Hart, 146 U. S. 183, 194; WILLOUGHBY, THE CONSTITUTION, § 71.

[18] See CHURCH, HABEAS CORPUS, 149, n. 3; *cf.* GUTHRIE, FOURTEENTH AMENDMENT, 177 ff.

[1] See 2 CHAMBERLAYNE, MODERN LAW OF EVIDENCE, § 1026; 4 WIGMORE, EVIDENCE, § 2491; J. B. Thayer, "Presumptions and the Law of Evidence," 3 HARV. L. REV. 141, 166.

[2] J. B. Thayer, *supra*, at p. 166. "In dealing with the subject of evidence it is expedient to avoid the use of these terms, presumptions of law and presumptions of fact, for they do not help the discussion, and they are worse than useless, from their ambiguity."

[3] See J. B. Thayer, *supra*, at p. 148; BEST, EVIDENCE, 11 ed., § 304. "Presumptions of law are in reality rules of law and a part of the law itself." Doane *v.* Glenn, 1 Colo. 495, 504.

[4] See BEST, EVIDENCE, § 304; CHAMBERLAYNE, EVIDENCE, § 1027. "A presumption of fact is an inference which a reasonable man would draw from certain facts which have been proved to him. Its basis is in logic; its source is in probability." Liverpool, etc. Ins. Co. *v.* Southern Pacific Co., 125 Cal. 434, 58 Pac. 55.

be drawn from some fact "established in direct evidence, as if it were the very fact in issue." [5] The rule in this form has been vigorously attacked by Dean Wigmore; [6] but it nevertheless crops up with frequent recurrence, sometimes with unfortunate results.[7] Usually the decisions appear correct in result; some may be explained on the general ground that there was not sufficient evidence to support a verdict; [8] in others the primary facts upon which the structure of the jury's reasoning was built were not clearly established; [9] in still others, the inferences asked were unreasonable; [10] but in all the maxim did nothing but give a confused and unsatisfactory explanation of a correct result.

A recent case in which the maxim was invoked shows its usual application. *Atchison, T. & S. F. Ry. Co.* v. *De Sedillo*, 219 Fed. 686. In this case, it was necessary, in order to charge the railroad with the violation of a duty of due care, to prove that the deceased was struck at a certain crossing. His body was found on the track five hundred feet below the crossing. A foot severed from the body was found caught in a frog at an intermediate point. Footprints were found at the crossing, and two marks, such as might have been made by a body dragged along by a train, extended from the crossing to the point near where the body was found. The jury was asked to infer that the footprints were those of deceased, and from this and the marks along the track to infer that he was struck at the crossing and dragged along to the point where his body was found. A verdict for the plaintiff was set aside because founded on "a presumption upon a presumption." If the result was correct, it was simply on the ground that the plaintiff's case was too weak and conjectural to go to the jury. But had there been evidence from which the jury might reasonably have inferred that the footprints at the crossing were those of the deceased, it would seem on principle that, coupling that inference with the other facts of the case, the jury might again reasonably have inferred that the deceased was struck at the crossing, and so on *ad infinitum*.

In general, it is only where the court feels that the evidence presented is insufficient to support a verdict that it bothers to forbid inference upon inference. Manifestly, in any case of circumstantial evidence, the ultimate conclusion from the facts is arrived at through a series of inferences.[11] Thus, a jury may infer from handwriting peculiarities that defendant wrote a threatening letter, and from this fact infer that it was he who murdered deceased. This logical process occurs every day, under the very noses of courts which proclaim that there may be no presumption upon a presumption. The true rule is that if the primary

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[5] STARKIE, EVIDENCE, pt. 1, p. 80, quoted in United States *v.* Ross, 92 U. S. 281, 284; 2 CHAMBERLAYNE, EVIDENCE, § 1029; 2 WHARTON, EVIDENCE, 2 ed., § 1226.

[6] 1 WIGMORE, EVIDENCE, § 41.

[7] Globe Accident Ins. Co. *v.* Gerisch, 163 Ill. 625, 45 N. E. 563.

[8] Douglass *v.* Mitchell, 35 Pa. St. 440; Shoeman *v.* Temple Safety Deposit Vaults, 189 Ill. App. 316.

[9] Bycynski *v.* Illinois Steel Co., 115 Ill. App. 326.

[10] Lamb *v.* Union Ry. Co., 195 N. Y. 260, 88 N. E. 371; Phila. City Pass. Ry. Co. *v.* Henrice, 92 Pa. St. 431; Manning *v.* John Hancock Mut. L. Ins. Co., 100 U. S. 693; Thayer *v.* Smoky Hollow Coal Co., 121 Ia. 121, 96 N. W. 718; United States *v.* Ross. 92 U. S. 281.

[11] See 1 WIGMORE, EVIDENCE, § 41.

fact is sufficiently established to be the basis for a reasonable inference, such inference may be drawn and used in connection with other facts, or even alone, as the foundation for a fresh inference.[12] If each inference is reasonable, the verdict, which is the final inference, cannot fail to be reasonable, and hence unimpeachable. This sounder rule is sometimes stated as an exception to the maxim that there shall be no presumption on a presumption;[13] but it is apparent that the exception, rightly understood, eats up the rule. Like numerous other impressive legal phrases, which serve but to obscure,[14] the maxim may profitably be discarded.

CONTROL RETAINED BY THE INCORPORATING STATE OVER THE OBLIGATIONS OF A FOREIGN CORPORATION. — Two conflicting decisions, handed down within a few months of each other on precisely the same state of facts, illustrate the perplexing uncertainty which prevails concerning the extent of legislative control over the obligations of a foreign corporation retained by the sovereign of its domicile. In each case the plaintiff joined, in New York, a Canadian mutual benefit insurance association. By the authority of an act of the Canadian Parliament, subsequently adopted, an otherwise unauthorized assessment was levied on the members of the association, and declared a lien on their policies. In a suit to enjoin the enforcement of the lien, the Supreme Court of New York held it invalid. *M'Clement* v. *Supreme Court, I. O. F.*, 88 Misc. 475. On the same facts, in an action on the policy, a federal court, sitting in New York, reached the opposite conclusion. *Stockwell* v. *Supreme Court, I. O. F.*, 216 Fed. 205 (Dist. Ct., W. D., N. Y.).

The question of what law governs the obligation and the discharge of contracts is one as to which there is still no consensus of legal opinion.[1] A discussion of this problem in relation to the principal cases, however, would be futile, for in each case, the place of making was identical with the place of performance. Furthermore, the principle invoked by the federal court operates entirely without regard to the law that would normally govern a contract. Following the case of *Canada Southern Ry. Co.* v. *Gebhard*,[2] this court affirms broadly that as to contracts with a foreign corporation, the local law is subject in all respects to the legislative control that may be constitutionally exercised over the corporation at its domicile. To some extent, this notion is a familiar one. Thus it is elementary that the creating sovereign can put an end to the existence

[12] See BEST, PRESUMPTIONS OF LAW AND FACT, p. 247, "The existence of the principal or any intermediary evidentiary fact may be inferred from another, which is only the probable consequence of a third."

[13] Hinshaw *v.* State, 147 Ind. 334, 363, 47 N. E. 157, 166. "This process of tallying and confirming each circumstance by the others does not infringe the general rule that one inference cannot be based on another. There is an important exception to that rule, however. A fact in the nature of an inference may itself be taken as the basis of a new inference, whether intermediate or final, provided the first inference has the required basis of a proved fact."

[14] See Judge Smith, "The Use of Maxims in Jurisprudence," 9 HARV. L. REV. 13.

[1] For a statement of the conflicting views, see a series of articles by Prof. J. H. Beale in 23 HARV. L. REV. 1, 79, 194, 260; see also, BEALE, SUMMARY OF THE CONFLICT OF LAWS, § 97.

[2] 109 U. S. 527.